

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
judiciary.house.gov

November 28, 2022

The Honorable Steven Dettelbach
Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
Washington, DC 20226

Dear Director Dettelbach:

As we prepare for the 118th Congress, we write again to obtain your voluntary compliance with the outstanding requests for documents and information necessary for our oversight. We appreciate your prompt attention to these outstanding matters.

Over the past twenty-one months, we have made several requests for information and documents concerning the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) efforts to regulate firearms through the rulemaking process. We reiterated and itemized these requests in our recent letter of November 3, 2022, which is enclosed for your convenience. To date, you have ignored these requests, or you have failed to respond sufficiently. Please be aware that if our requests remain outstanding at the beginning of the 118th Congress, the Committee may be forced to resort to compulsory process to obtain the material we require.

In addition, to advance our oversight, we may require prompt testimony from ATF employees. We expect your unfettered cooperation in arranging for the Committee to receive testimony from ATF employees. Please be advised that any such testimony would be in addition to periodic hearings we anticipate convening, if necessary, with Robert Warren, Deputy Chief, Legislative Affairs Division, concerning the status of outstanding requests for documents and testimony.

The congressional oversight power, rooted in Article I of the Constitution, is "broad and indispensable."¹ This authority "encompasses inquiries into the administration of existing laws, studies of proposed law, and surveys of defects in our societal, economic, or political system for the purpose of enabling the Congress to remedy them."² The Judiciary Committee is authorized to conduct oversight of ATF pursuant to the Rules of the House of Representatives.³

¹ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (citing *Watkins v. United States*, 354 U.S. 178, 187, 215 (1957)) (internal quotation marks and citations omitted).

² *Id.*

³ Rules of the U.S. House of Representatives, R. X (2021).

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November 28, 2022
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Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member

cc: The Honorable Jerrold L. Nadler
Chairman

Enclosure

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November 3, 2022

The Honorable Steven Dettelbach
Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Director Dettelbach:

We are conducting oversight of the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) efforts to regulate firearms and restrict law-abiding Americans' Second Amendment rights.¹ We wrote to then-ATF Acting Director Marvin Richardson on July 16, 2021, concerning ATF's proposed rule attempting to regulate stabilizing braces, and on August 10, 2021, concerning ATF's proposed rule attempting to expand definitions of several terms associated with firearms.² To date, the ATF has responded to these requests with only two half-page letters, and has not produced any of the requested documents or information. These letters do not sufficiently respond to our requests or alleviate our concerns.

In both proposed rules, ATF has gone well beyond the authority granted the agency in any applicable federal statutes. With respect to ATF's effort to regulate stabilizing braces, Congress has not criminalized the use of a pistol arm-stabilizing brace under the GCA or allowed for its regulation under the NFA. Through this proposed rule, ATF seeks to subject stabilizing braces to GCA criminal penalties and NFA regulation without Congressional prohibition of the underlying activity. Similarly, with respect to ATF's effort to expand the definition of firearm-related terms, ATF is acting in contravention of Congress's intent, which has expressly chosen not to adopt the definitions that ATF now seeks to achieve through regulation.

The Biden Administration's regulatory efforts are a deliberate attempt to usurp the authority of Congress and infringe on American citizens' fundamental Second Amendment rights. We reiterate our requests, which are itemized in the attached appendix and incorporated

¹ Alcohol, Tobacco, Firearms, and Explosives Bureau, Factoring Criteria for Firearms with Attached "Stabilizing Braces," 86 Fed. Reg. 30826 (Jun. 7, 2021); Alcohol, Tobacco, Firearms, and Explosives Bureau, Definition of "Frame or Receiver" and Identification of Firearms, 86 Fed. Reg. 27,720 (May 21, 2021).

² See Letter from Jim Jordan et al, to Marvin Richardson, Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (Jul. 16, 2021); Letter from Andy Biggs et al, to Marvin Richardson, Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (Aug. 10, 2021).

The Honorable Steven Dettelbach

November 3, 2022

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herein, and ask that you produce the entirety of the requested material as soon as possible but no later than November 17, 2022.

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials in your possession relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is fluid and cursive, with the first name "Jim" and last name "Jordan" clearly distinguishable.

Jim Jordan
Ranking Member

cc: The Honorable Jerrold L. Nadler
Chairman

Enclosure

Appendix: Information and Document Requests

July 16, 2021:

1. Please explain when ATF first began to conceive of the need to regulate stabilizing braces through an agency notice.
2. Please provide information on the comments received before ATF rescinded the original stabilizing brace notice posted on December 18, 2020, including:
 - a. The total number of comments regarding the notice;
 - b. The number of comments in support of the notice; and
 - c. The number of comments in opposition to the notice.
3. Please explain the circumstances of ATF's decision to rescind the notice it originally published on December 18, 2020, including the individuals and offices involved in the decision-making process.
4. Please identify the offices within ATF that conceived, drafted, reviewed, and approved the June 7, 2021, notice.
5. Please explain whether the Justice Department reviewed and approved ATF's June 7, 2021, notice, including the entities involved in the review and the timing of the review.
6. Please explain whether the Office of Management and Budget reviewed and approved ATF's June 7, 2021, notice, including the entities involved in the review and the timing of the review.
7. Please provide the following information with respect to ATF Worksheet 4999:
 - a. Please explain what constitutes a "non-operational accessor[y]" in "Section I – Prerequisites";
 - b. Please explain in more detail how ATF determined that weapons with a stabilizing brace and a weight of less than 64 ounces in "Section I – Prerequisites" will need to be regulated under the NFA;
 - c. Please explain in more detail how the lack of a sight on a firearm with a stabilizing brace will accrue a point in "Section II – Accessory Characteristics"; and
 - d. Please explain what objective criteria ATF will use in determining the point value for firearms under the "Rear Surface Area" in "Section II – Accessory Characteristics."

August 8, 2021:

1. Please explain when ATF first began to conceive of the need to broaden the definition of “frame or receiver” and the identification of firearms through an agency notice.
2. Please explain why ATF believes it is “necessary to trace all firearms” and how “tracing all firearms” is consistent with the Gun Control Act of 1968 and the National Firearms Act.
3. Please identify the offices within ATF that conceived, drafted, reviewed, and approved the May 21, 2021 notice.
4. Please explain whether the Justice Department reviewed and approved ATF’s May 21, 2021 notice, including the entities involved in the review and the timing of the review.
5. Please explain whether the Office of Management and Budget reviewed and approved ATF’s May 21, 2021 notice, including the entities involved in the review and the timing of the review.